

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CORY GILMORE,

Petitioner/Appellee,

vs.

**Case No. 08-C-413
(USCA No. 08-2929)**

WILLIAM POLLARD,

Respondent/Appellant.

DECISION AND ORDER

This matter is before the Court on the motion of Petitioner Cory Gilmore (“Gilmore”), for relief from judgment pursuant to Rule 60(b)(2) of the Federal Rules of Civil Procedure. He states that the newly discovered evidence in this action is that he only had no funds in his prison trust account and could not pay the filing fee in this action.

Prior to filing his Rule 60(b) motion, Gilmore filed a notice of appeal. However, this Court may still consider his motion for relief from judgment. *See Craig v. Ontario Corp.*, ___ F.3d ___, 2008 WL 4149718 *2 (7th Cir. 2008). The contentions Gilmore raises regarding the absence of funds in his trust account and the expenditures which he made prior to filing this action are the same arguments that he made in his prior Rule 59(e) motion to alter or amend judgment. The Court denied that motion on July 1, 2008.

The same standard applies to motions made on the ground of newly discovered evidence whether they are made under Rule 59 or Rule 60(b)(2). *Peacock v. Bd. of Sch. Comm’rs*

of City of Indianapolis, 721 F.2d 210, 213 (7th Cir. 1983); *See also* 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2859 (1995). For the same reasons as those stated in the Court's July 1, 2008, Order, Gilmore's Rule 60(b)(2) motion is denied.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Gilmore's Rule 60(b)(2) motion (Docket No. 18) is **DENIED**.

Dated at Milwaukee, Wisconsin this 8th day of October, 2008.

BY THE COURT

s/ Rudolph T. Randa

**Hon. Rudolph T. Randa
Chief Judge**